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/043R

DRAFTED BY: AF/C:KAISTON:KCA

APPROVED BY: AF:GEMOOSE

AF:PBUSHNELL

AF/C:ARENDER

L:CNIX

IO/UNP:GSTANTON

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FM SECSTATE WASHDC

TO AMEMBASSY KIGALI IMMEDIATE

INFO USMISSION USUN NEW YORK IMMEDIATE

RWANDA COLLECTIVE PRIORITY

C O N F I D E N T I A L STATE 298222

E.O. 12356: DECL: OADR

TAGS: PREL, PHUM, PGOV, UN, US, RW

SUBJECT: BIZIMUNGU CALLS AF ON TRIBUNAL

1. CONFIDENTIAL - ENTIRE TEXT. THIS AN ACTION REQUEST.  
SEE PARA 12.

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2. SUMMARY. RWANDAN PRESIDENT BIZIMUNGU CALLED AF A/S

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MOOSE CONCERNING THE PROPOSED INTERNATIONAL TRIBUNAL FOR RWANDA. HE REITERATED HIS OBJECTIONS TO THE PROPOSED JURISDICTIONAL STARTING DATE, THE UNAVAILABILITY OF THE DEATH PENALTY, AND THE POSSIBILITY OF IMPRISONMENT OUTSIDE RWANDA. HE PRESENTED SERIOUSLY FLAWED LEGAL ARGUMENTS TO SUPPORT HIS OBJECTIONS. A/S MOOSE AND DAS BUSHNELL, WHO JOINED IN THE CALL, STRESSED THAT THE RESOLUTION WOULD PASS AND THAT RWANDA SHOULD NOT ISOLATE ITSELF BY A NO VOTE. END SUMMARY

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BIZIMUNGU'S TELCON  
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3. BIZIMUNGU OBJECTED TO THE PROPOSED START DATE OF JANUARY 1, 1994 BECAUSE HE THOUGHT THIS WOULD INSULATE THE PLANNERS AND ORGANIZERS OF THE GENOCIDE WHILE THE "PEASANTS" WHO WERE INCITED BY THE LEADERS WOULD BEAR THE BRUNT OF THE PUNISHMENT. (THE GOR HAS EXPRESSED THIS CONCERN BEFORE AND WE HAVE EXPLAINED THAT EVIDENCE OF PLANNING PRIOR TO JANUARY 1994 COULD BE CONSIDERED BY THE COURT -- SEE COMMENT BELOW.)

4. ON THE DEATH PENALTY, BIZIMUNGU CLAIMED THAT THE GENOCIDE CONVENTION PROVIDES THAT THE LAWS OF THE COUNTRY WHERE THE GENOCIDE OCCURS SHOULD GOVERN. RWANDA ALLOWS CAPITAL PUNISHMENT AND BIZIMUNGU SAID THEY WOULD HAVE TO CHANGE THEIR LAWS FOR THE TRIBUNAL TO BE ABLE TO EXCLUDE CAPITAL PUNISHMENT AS A POSSIBLE PUNISHMENT. THIS,

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BIZIMUNGU SAID, THE GOR WAS NOT ABOUT TO DO. HE SAID THAT BY PROHIBITING THE DEATH PENALTY, THE INTERNATIONAL COMMUNITY WAS TRYING TO "CHANGE THE RULES" FOR GENOCIDE CASES. HE SUGGESTED THAT SOME IN THE INTERNATIONAL COMMUNITY WERE TRYING TO PROTECT THE KILLERS. (BIZIMUNGU'S READING OF THE CONVENTION IS INCORRECT; THE LAW OF THE STATE WHERE THE GENOCIDE OCCURS DOES NOT GOVERN WHAT PUNISHMENT CAN BE METED OUT BY AN INTERNATIONAL TRIBUNAL -- SEE COMMENT BELOW.)

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5. LASTLY, BIZIMUNGU FEARED THAT FOREIGN GOVERNMENTS HOLDING RWANDANS CONVICTED BY THE TRIBUNAL MIGHT PARDON OR COMMUTE THE SENTENCE OF THE PRISONER. HE CLAIMED THAT UNDER THE LAW GOVERNING GENOCIDE, THE HEAD OF STATE OF THE COUNTRY IMPRISONING THE CONVICT HAS THE RIGHT TO PARDON THE CONVICT OR COMMUTE HIS SENTENCE. (AGAIN, BIZIMUNGU IS WRONG ON THE LAW HERE -- SEE COMMENT BELOW.)

6. BIZIMUNGU RAISED OTHER CONCERNs, SUCH AS THE NEUTRALITY OF THE JUDGES. THE GOR WANTED THE RIGHT TO QUESTION CANDIDATES FOR THE COURT TO ENSURE THE JUDGES' NEUTRALITY.

7. BIZIMUNGU STRESSED THAT THE GOR CANNOT BE NEUTRAL ON THE TRIBUNAL ISSUE ITSELF. THE SUBJECT IS TOO IMPORTANT AND HAS GREAT SYMBOLIC VALUE. THUS, THE GOR MUST EITHER VOTE FOR OR AGAINST.

8. A/S MOOSE AND DAS BUSHNELL REITERATED OUR POINTS ABOUT THE IMPORTANCE OF THE TRIBUNAL AND THE NEGATIVE PERCEPTIONS THAT WOULD BE GENERATED IF THE GOR VOTED  
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AGAINST IT. DAS BUSHNELL SAID FLATLY THAT THERE WILL BE A TRIBUNAL AND THAT RWANDA DOES NOT WANT TO ISOLATE ITSELF BY A "NO" VOTE; IT NEEDS TO STAY IN THE GAME AND HAVE INPUT. BIZIMUNGU SEEMED TO UNDERSTAND THIS POINT. WE

ASSURED HIM THAT WE WOULD PASS ON HIS CONCERNs TO THE UN SO THAT ITS LEGAL EMISSARY COULD DISCUSS THEM WITH THE GOR. BIZIMUNGU ASKED IF HE COULD CALL US BACK AFTER HE TALKS TO THE UN LEGAL EMISSARY. A/S MOOSE AND DAS BUSHNELL SAID WE WOULD WELCOME THE CHANCE TO CONTINUE THE DIALOGUE.

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COMMENT: THE LEGAL TRUTH  
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9. BIZIMUNGU'S THREE MAIN OBJECTIONS ARE ALL BASED ON LEGAL MISCONCEPTIONS. FIRST, HIS ARGUMENT ON THE START DATE APPEARS TO REFLECT A MISUNDERSTANDING OF HOW CRIMINAL

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PROSECUTIONS WORK. CRIMINAL PROSECUTIONS ROUTINELY TRACE BACK TO THE PRIOR PLANNING OF CRIMES, PARTICULARLY TO SHOW CONSPIRACY, BUT ALSO TO PROVE AN ELEMENT OF A CRIME, SUCH AS INTENT. BIZIMUNGU'S CONCERN ABOUT THE INTERNATIONAL TRIBUNAL LETTING THE LEADERS OFF IS THUS UNFOUNDED. MOREOVER, ANY CASES OUTSIDE THE TRIBUNAL'S JURISDICTION WOULD STILL BE SUBJECT TO THE JURISDICTION OF THE RWANDAN COURTS.

10. AS FOR THE DEATH PENALTY, ARTICLE VI OF THE GENOCIDE CONVENTION PROVIDES THAT PERSONS CHARGED WITH GENOCIDE OR ANY OF THE OTHER ENUMERATED ACTS "SHALL BE TRIED BY A

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COMPETENT TRIBUNAL OF THE STATE IN THE TERRITORY OF WHICH THE ACT WAS COMMITTED, OR BY SUCH INTERNATIONAL PENAL TRIBUNAL AS MAY HAVE JURISDICTION WITH RESPECT TO THOSE CONTRACTING PARTIES WHICH SHALL HAVE ACCEPTED JURISDICTION." THE CONVENTION EXPRESSES NO PREFERENCE FOR NATIONAL OR INTERNATIONAL JURISDICTION AND CERTAINLY DOES NOT/NOT PROVIDE FOR NATIONAL LAW TO GOVERN AN INTERNATIONAL TRIBUNAL. THE INTERNATIONAL TRIBUNAL CAN DETERMINE THE SENTENCING BY WHICH IT GOVERNS. THAT HAS NO BEARING ON RWANDAN LAW, AND RWANDA IS FREE TO CONTINUE TO TRY NATIONAL CASES UNDER NATIONAL LAW.

11. THE GENOCIDE CONVENTION CONTAINS NO SUCH PROVISION GRANTING THE RIGHT OF PARDON TO THE HEAD-OF-STATE OF AN IMPRISONING COUNTRY. THE TRIBUNAL STATUTE DOES PROVIDE THAT PURSUANT TO THE APPLICABLE LAWS OF THE STATE IN WHICH THE DEFENDANT IS IMPRISONED, HE OR SHE IS ELIGIBLE FOR PARDON OR COMMUTATION OF SENTENCE. HOWEVER, BEFORE THAT CAN OCCUR, THE STATE MUST NOTIFY THE INTERNATIONAL TRIBUNAL, AND THE PRESIDENT OF THE TRIBUNAL, IN CONSULTATION WITH THE JUDGES, SHALL DECIDE WHETHER THAT IS APPROPRIATE. THE STANDARD THE TRIBUNAL WOULD APPLY WOULD PRESUMABLY BE QUITE STRINGENT FOR GENOCIDE.

12. ACTION REQUEST: EMBASSY KIGALI IS REQUESTED TO INFORM UN LEGAL EMISSARY HANS CORRELL OF BIZIMUNGU'S CONCERNS AND SHARE WITH HIM OUR LEGAL ANALYSIS OF HIS

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**OBJECTIONS.**

**13. MINIMIZE CONSIDERED. CHRISTOPHER  
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